

**EXHIBIT 21
FILED UNDER SEAL**

UNSEALED BY COURT ORDER (DOC. 470)

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Page 1

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE EASTERN DISTRICT OF VIRGINIA
4 ALEXANDRIA DIVISION

5 UNITED STATES,) 1:23-cv-00108-LMB-JFA
6 et al.,)
7)
8 Plaintiffs,)
9)
10 vs.)
11)
12 GOOGLE LLC,)
13)
14 Defendants.)
15)
16)

17 - HIGHLY CONFIDENTIAL -

18 VIDEOTAPED DEPOSITION OF

19 CHRISTOPHER KARPENKO

20 August 10, 2023

21 9:35 a.m.

22 Reported by: Bonnie L. Russo

23 Job No. 6031969

Veritext Legal Solutions

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973-410-4098

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Page 2

1 Videotaped Deposition of Christopher Karpenko

2 held at:

3

4

5

6 Paul, Weiss, Rifkind, Wharton & Garrison, LLP

7 2001 K Street, N.W.

8 Washington, D.C.

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17

18 Pursuant to Notice, when were present on behalf

19 of the respective parties:

20

21

22

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Page 3

1 APPEARANCES:

2

3 On behalf of the Plaintiffs:

4 JAMES RYAN, ESQUIRE

5 DAVID GROSSMAN, ESQUIRE

6 ALVIN CHU, ESQUIRE

7 UNITED STATES DEPARTMENT OF JUSTICE

8 450 5th Street, N.W.

9 Washington, D.C. 20530

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11 david.grossman@usdoj.gov

12 alvin.chu@usdoj.gov

13

14 On behalf of the Defendant:

15 MARTHA L. GOODMAN, ESQUIRE

16 ANNELISE CORRIVEAU, ESQUIRE

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Page 4

1 APPEARANCES (CONTINUED) :

2

3

4 Also Present:

5

Glen Fortner, Videographer

6

Michael Weaver, United States Postal Service

7

8

9 Also Present Via Remotely:

10

Julia Wood, DOJ

11

Sean Carman, DOJ

12

Katherine Clemens, DOJ

13

Jeannie S. Rhee, Paul, Weiss, Rifkind, Wharton

14

& Garrison, LLP

15

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Page 5

1

I N D E X

2

EXAMINATION OF CHRISTOPHER KARPENKO PAGE

3

BY MS. GOODMAN 11

4

5

6

EXHIBITS

7

Exhibit 33 E-Mail Chain dated 1-9-23 53

USPS-ADS-0000140586-588

10

Exhibit 34 (CLAWED BACK) --

12

Exhibit 34A E-Mail Chain dated 1-11-23 125

USPS-ADS-0000043815-816

15

Exhibit 35 Text Messages 93

USPS-ADS-0000899149-151

18

Exhibit 36 (CLAWED BACK) --

20

Exhibit 36A E-Mail Chain dated 1-11-23 135

USPS-ADS-0000041965

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Page 6

1 EXHIBITS (CONTINUED):

2 Exhibit 36B Attachment to Exhibit 36A 315

4 Exhibit 37 E-Mail Chain dated 3-8-23 135

5 USPS-ADS-0000040943

7 Exhibit 38 NIC+ZOE August 2023 168

8 | Advertisement

10 | Exhibit 39 The U.S. Postal Service 175

11 | Five-Year Strategic Plan

12 FY2020-FY2024

14 Exhibit 40 E-Mail Chain dated 3-29-22 199

15 | Attachment

16 | USPS-ADS-0000592851-863

Exhibit 41 Meeting Invite dated 4-30-20 211

19 Attachment

20 | USPS-ADS-0000661829-869

HIGHLY CONFIDENTIAL

Page 7

1 EXHIBITS (CONTINUED):

2 Exhibit 42 E-Mail Chain dated 6-18-21 227

3 USPS-ADS-0000713476-481

4

5 Exhibit 43 E-Mail dated 4-20-20 238

6 Attachment

7 USPS-ADS-0000492772-780

8

9 Exhibit 44 E-Mail Chain dated 2-14-23 245

10 Attachment

11 USPS-ADS-0000042055-181

12

13 Exhibit 45 E-Mail Chain dated 4-26-22 262

14 Attachment

15 USPS-ADS-0000016395-463

16

17 Exhibit 46 E-Mail Chain dated 9-14-22 280

18 USPS-ADS-0000620144-145

19

20 Exhibit 47 E-Mail Chain dated 11-16-21 281

21 USPS-ADS-0000029221-226

22

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Page 8

1 EXHIBITS (CONTINUED):

2 Exhibit 48 E-Mail dated 6-23-20 287

3 USPS-ADS-0000447582-583

4

5 Exhibit 49 E-Mail dated 6-15-20 293

6 Attachment

7 USPS-ADS-000227880-968

8

9 Exhibit 50 Order/Solicitation/ 299

10 Offer/Award

11 12-30-21

12 USPS-ADS-0000529112-186

13

14 Exhibit 51 Order/Solicitation/ 301

15 Offer/Award

16 USPS-ADS-0000529380-412

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21

22 (Exhibits bound separately.)

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Page 9

1 P R O C E E D I N G S

2 (9:36 a.m.)

3

4 THE VIDEOGRAPHER: Good morning.

5 We are going on the record at
6 on August 10, 2023.

7 Please note that the microphones are
8 sensitive and may pick up whispering and
9 private conversations. Please mute your phones
10 at this time. Audio and video recording will
11 continue to take place unless all parties agree
12 to go off the record.

13 This is Media Unit 1 of the
14 video-recorded deposition of Christopher
15 Karpenko in the matter of United States, et
16 al., v. Google LLC. The location of the
17 deposition is Paul Weiss.

18 My name is Glen Fortner representing
19 Veritext, and I am the videographer. The court
20 reporter is Bonnie Russo from the firm
21 Veritext. I am not related to any party in
22 this action, nor am I financially interested in

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Page 10

1 the outcome.

2 If there are any objections to
3 proceeding, please state them at the time of
4 your appearance.

5 Counsel and all present, including
6 remotely, will now state their appearances and
7 affiliations for the record beginning with the
8 noticing attorney.

9 MS. GOODMAN: Martha Goodman from
10 Paul Weiss on behalf of Google LLC, and I am
11 joined by my colleague Annelise Corriveau.

12 MR. RYAN: Good morning. James Ryan
13 on behalf of the United States and the witness.

14 MR. GROSSMAN: David Grossman on
15 behalf of the United States.

16 MR. CHU: Alvin Chu on behalf of the
17 United States.

18 MR. WEAVER: Michael Weaver for the
19 United States Postal Service.

20 MR. KARPENKO: Chris Karpenko with
21 the United States Postal Service.

22 MS. GOODMAN: Is anybody on Zoom who

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Page 45

1 MR. RYAN: Objection to this line.

2 I mean, you can't ask questions like this. Are
3 you asking which attorneys he has talked with?

4 MS. GOODMAN: Yes. It's an entirely
5 proper question.

6 BY MS. GOODMAN:

7 Q. So my question to you, Mr. Karpenko,
8 is: What attorneys have you spoken with this
9 year regarding a government investigation of
10 digital advertising and Google?

11 A. Michael Weaver has been my primary
12 contact. There may be others within the law
13 department present. I -- I'm not specifically
14 recalling anyone over another. It was very
15 much just an interaction conversation.

16 Q. And when you say "the law
17 department," is that within the postal service?

18 A. My reference to the law department
19 is the USPS law department.

20 Q. How about any lawyers affiliated
21 with the Department of Justice?

22 MR. RYAN: Objection --

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Page 46

1 BY MS. GOODMAN:

2 Q. Have you spoken this year with any
3 lawyers from the Department of Justice
4 regarding an investigation of digital
5 advertising and Google?

6 MR. RYAN: Objection to form and
7 foundation.

8 THE WITNESS: Yes.

9 BY MS. GOODMAN:

10 Q. And what lawyers at the Department
11 of Justice have you spoken with regarding an
12 investigation of digital advertising and
13 Google?

14 MR. RYAN: Objection to foundation.

15 MS. GOODMAN: Mr. Karpenko has said
16 that he spoke with Department of Justice
17 lawyers. I have asked the foundation -- I have
18 laid the foundation and now --

19 MR. RYAN: It's not a memory test.

20 MS. GOODMAN: -- I am following on
21 the question.

22 MR. RYAN: It's not a memory test.

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Page 47

1 MS. GOODMAN: Of course not. If he
2 doesn't recall, he can provide that answer, but
3 the foundation objections are not proper so --

4 MR. RYAN: But you're asking the
5 attorney -- you're asking him to list out all
6 the attorneys he has spoken with and --

7 MS. GOODMAN: If he can do that,
8 yes. I am entitled to ask the question. If he
9 is not able to recall those names from his
10 memory --

11 MR. RYAN: You are getting into
12 communications with counsel, so I just --

13 MS. GOODMAN: No. No, I'm not.

14 MR. RYAN: If -- he can try to
15 answer questions about who he has talked with
16 to the extent he knows or recalls and when
17 those communications -- you're entitled to ask
18 those questions, but I think the questions are
19 going into the line of communications with
20 counsel.

21 MS. GOODMAN: Okay. Well, I am very
22 mindful of that line, and I am -- I am not

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Page 48

1 intending to impede into privileged
2 conversations. I am asking for the identities
3 of the lawyers as well as the time period. The
4 kind of things that would occur -- appear --
5 appear on a privilege log. So that's what my
6 questions are designed at. Okay.

7 | BY MS. GOODMAN:

8 Q. Mr. Karpenko, to the extent you
9 recall, which attorneys at the Department of
10 Justice have you spoken with regarding the
11 government investigation into digital ads and
12 Google?

13 A. I can't recall them all. There are
14 three attorneys representing the Department of
15 Justice here that I have engaged with
16 privileged conversation with.

17 There is one on the Zoom that shows
18 up as the one screen that we have engaged -- I
19 believe I have engaged with.

20 O. And is that Mr. Carman?

21 A. I believe so.

22 Q. Okay.

HIGHLY CONFIDENTIAL

Page 49

1 A. There are probably others. I didn't
2 keep a list of them. I would have to go back
3 and refer to maybe a meeting invite that people
4 were on, but I wouldn't be able to tell you
5 specifically who off the top of my head, and
6 even some I wouldn't even remember their names.

7 Q. In what time period do you recall --
8 what was the first time you recall speaking
9 with a lawyer from the Department of Justice
10 regarding a digital -- regarding an
11 investigation into digital ads and Google?

12 A. The -- it was similar to the time
13 that it became publicly published out into the
14 world.

15 Q. And when you came across the
16 publication of the lawsuit in the course of
17 your work -- well, strike that.

18 Is that how you came to learn of the
19 lawsuit in the course of your work as executive
20 director of brand marketing?

21 A. I became aware --

22 MR. RYAN: Objection to foundation.

HIGHLY CONFIDENTIAL

Page 50

1 THE WITNESS: I became aware of --
2 of the complaint through a news feed that came
3 through my iPhone as well as through our
4 lawyers reaching out to us through some
5 contact, I believe, with Department of Justice.

6 BY MS. GOODMAN:

7 Q. And prior to learning of the
8 complaint through a news feed that came from
9 your iPhone, had you anticipated being involved
10 in a lawsuit regarding Google and digital
11 advertising?

12 MR. RYAN: Object to the form.
13 Mischaracterizing the witness's prior
14 testimony.

15 THE WITNESS: Could you clarify that
16 for me.

17 BY MS. GOODMAN:

18 Q. Sure. Before you learned of the
19 lawsuit through a news feed that came through
20 your iPhone, did you know a lawsuit would be
21 coming?

22 MR. RYAN: Object to the form.

HIGHLY CONFIDENTIAL

Page 51

1 THE WITNESS: I only knew of the
2 complaint as a complaint. I did not know if
3 postal would be involved nor if I would be
4 involved in any of the complaint.

5 BY MS. GOODMAN:

6 Q. And so it was subsequent to the
7 filing of the complaint that you came to be
8 involved in this lawsuit; is that accurate?

9 MR. RYAN: Objection. Foundation.
10 Objection. Form and foundation.

11 THE WITNESS: I am trying to
12 remember if information was asked for from the
13 postal service tied to our media spend and our
14 media process.

15 BY MS. GOODMAN:

16 Q. But prior to the filing of the
17 complaint, did you have any knowledge or
18 awareness that the postal service would be
19 involved as an entity for which the United
20 States would seek monetary damages from Google?

21 MR. RYAN: Objection to form.

22 THE WITNESS: I wouldn't have

HIGHLY CONFIDENTIAL

Page 52

1 specific information as to DOJ's specific
2 intent.

3 BY MS. GOODMAN:

4 Q. So you --

5 A. I didn't -- I didn't write the
6 complaint.

7 Q. Have you read the complaint?

8 A. I have.

9 Q. And have you seen the United States
10 Postal Service mentioned anywhere in it?

11 A. I believe so.

12 Q. Okay. And when you read the -- did
13 you read the complaint around the time that it
14 was filed?

15 A. Yes.

16 Q. Okay. Did you read it as a result
17 of the news alert that you got?

18 MR. RYAN: Objection. Foundation.

19 THE WITNESS: I believe it was
20 provided under privilege while we were having
21 discussions.

22 MS. GOODMAN: Okay. Can I have Tab

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Page 53

1 | Page

(Deposition Exhibit 33 was marked for identification.)

BY MS. GOODMAN:

Q. Prior to the filing of the complaint, did you anticipate being a witness in this lawsuit?

A. There was nothing for me to think that I would be a witness for the complaint.

Q. And is that -- strike that.

I am handing you Exhibit 33,
USPS-ADS-140586 through 588.

I will ask you to take a look and see if you recognize this as an e-mail you received in January of 2023.

Did you receive this e-mail?

A. Yes.

Q. And it is with an individual at the United States Postal Service, Office of Inspector General; is that right?

A. Yes.

Q. And to the best of your

HIGHLY CONFIDENTIAL

Page 66

1 for the United States Postal Service
2 participating in a meeting with the Department
3 of Justice Antitrust Division if you consider
4 the Department of Justice to be your lawyer?

5 A. I consider our USPS law department,
6 counsel for the postal service. They represent
7 us in a number of different perspectives. I
8 think there are maybe close to 400 lawyers at
9 the postal service that handle everything from
10 employment law to IP protection, patent,
11 corporate business, regulatory, I am using
12 layperson's terms so I apologize, and the DOJ
13 also represents the postal service.

14 If the DOJ was to e-mail me
15 directly, I would include representatives from
16 our USPS legal group to be on the call. To me,
17 it's considered a privileged environment and
18 both -- both groups, DOJ and USPS work
19 together.

20 Q. So turning -- going up to the next
21 e-mail in the chain, Mr. Gardner says: "Okay,
22 great, and thank you for the clarification."

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Page 67

1 Do you see where I am?

2 A. Yes.

3 Q. He says: "Let me get back to you
4 after I speak to DOJ out west. They may want
5 to deconflict first."

6 Do you know -- what is your
7 understanding of deconflict, what deconflicting
8 means in this context?

9 A. The understanding I came away from,
10 from this e-mail, was that the OIG was doing
11 some type of analysis or investigation. It may
12 have been similar to what DOJ, the Department
13 of Justice, was looking at.

14 I can't speak as to what they were
15 looking for, looking at. Hence, my mention to
16 the office of inspector general contact, that
17 there was a -- another -- there were other
18 inquiries tied around media, and I feel like I
19 merely provided visibility to the OIG and to
20 the other counsels here to clarify what they
21 were working on, whether they were working on
22 something separate or they were working on

HIGHLY CONFIDENTIAL

Page 68

1 something that they need to work on together
2 potentially.

3 Q. And have you heard of the term
4 "deconflict" before?

5 A. Yes.

6 Q. What is your understanding of what
7 that means?

8 A. Again, in this context, this was
9 interpreted by me that the office of inspector
10 general was doing something, potentially DOJ
11 was doing something, and in order to ensure
12 there were not duplicative efforts or
13 conflicting efforts, they had an opportunity to
14 have conversation with themselves, with each
15 other, and understand just exactly what each
16 side was working on.

17 Q. And now going to the top e-mail on
18 the chain, Mr. Gardner writes to you that he
19 will be in touch soon.

20 Do you see that?

21 A. Yes.

22 Q. And did he get back in touch with

HIGHLY CONFIDENTIAL

Page 69

1 you?

2 A. I don't recall.

3 Q. After January 9, 2023, do you have
4 any recollection of any conversations with
5 anybody from the OIG with respect to digital ad
6 spend by the postal service?

7 A. I don't recall.

8 MS. GOODMAN: Shall we take a break?

9 MR. RYAN: Sure.

10 THE VIDEOGRAPHER: Going off the
11 record. The time is 10:56.

12 (A short recess was taken.)

13 THE VIDEOGRAPHER: Going back on the
14 record. The time is 11:17.

15 BY MS. GOODMAN:

16 Q. [REDACTED]

[REDACTED]

18 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

HIGHLY CONFIDENTIAL

Page 70

1

[REDACTED]

17

A.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Page 71

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[REDACTED]

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973-410-4098

HIGHLY CONFIDENTIAL

Page 72

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MR. RYAN: I think the answer to --

HIGHLY CONFIDENTIAL

Page 73

1 it sounds as if this is as a result of
2 privileged communications. To the extent that
3 this e-mail was as a result of privileged
4 communications you had with counsel, I would
5 object on privileged grounds.

6 MS. GOODMAN: And what is the nature
7 of the attorney-client privilege?

8 MR. RYAN: I don't know if this is
9 -- you can ask. I don't know if this is --
10 that's why I was careful to instruct the
11 witness if this is a result of attorney-client
12 communications, it would be work product.

13 MS. GOODMAN: This is not prepared
14 by an attorney.

15 MR. RYAN: But if it's at the
16 direction of counsel, it would be, right, it
17 would be work product.

18 BY MS. GOODMAN:

19 Q. Was this ask made at the direction
20 of a lawyer?

21 MR. RYAN: If you recall.

22 THE WITNESS: Specifically to reach

HIGHLY CONFIDENTIAL

Page 74

1 out to UM?

2 BY MS. GOODMAN:

3 Q. [REDACTED]

[REDACTED]
[REDACTED]

6 MR. RYAN: Counsel, you are asking
7 -- you're asking -- that's a question -- if you
8 ask it the other way around, it would be not
9 privileged. Just ask --

10 MS. GOODMAN: State your objection.
11 State your objection.

12 MR. RYAN: Privileged
13 communications.

14 MS. GOODMAN: Okay.

15 MR. RYAN: And attorney-client work
16 product unless we know otherwise. Why don't
17 you ask it so it's not -- it does not show up
18 as -- just ask, you know, if there was some
19 reason other than --

20 MS. GOODMAN: No. No. I will ask
21 the question the way I choose.

22 MR. RYAN: Then I will continue to

HIGHLY CONFIDENTIAL

Page 75

1 object.

2 MS. GOODMAN: Okay.

3 BY MS. GOODMAN:

4 Q. Mr. Karpenko, did you make this
5 request to Lisa Catucci and Mr. Knopf at UM at
6 the direction of your lawyer?

7 MR. RYAN: I am going to object.

8 BY MS. GOODMAN:

9 Q. Yes or no.

10 MR. RYAN: I am going to -- I am
11 going to instruct the witness not to answer
12 that question because it then reveals
13 communication with counsel.

14 MS. GOODMAN: No, it doesn't. It is
15 a yes-or no question.

16 MR. RYAN: Well, I'm instructing --
17 I am going to instruct the witness not to
18 answer the question. If you want, we can divvy
19 it out, dish it out later, but for that
20 question, I'm going to instruct the witness not
21 to answer.

22 BY MS. GOODMAN:

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Page 76

1 Q. Are you following that instruction?

2 A. I will go with his guidance today.

3 MS. GOODMAN: Obviously, I reserve
4 our rights to move to compel to get an answer
5 to that question, because it is an improper
6 assertion of the attorney work product --

7 MR. RYAN: Based on --

8 MS. GOODMAN: -- privilege.

9 MR. RYAN: Based on the testimony
10 that the witness has give -- this appears to
11 be, it would be a privileged communication, so
12 we might -- I will just notify you for the
13 record that we might be clawing this document
14 back.

15 MS. GOODMAN: Okay. Have fun with
16 that.

17 BY MS. GOODMAN:

18 Q. Let's go back to Exhibit 33.

19 You write to Mr. Gardner: "I will
20 look for the list of third parties on our end."

21 On January 9 in the second e-mail in
22 the thread, right?

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Page 77

1 MR. RYAN: Counsel, where are you?

2 THE WITNESS: First page.

3 MR. RYAN: If you can just --

4 BY MS. GOODMAN:

5 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17 MR. RYAN: Counsel --

18 MS. GOODMAN: He is in the middle of
19 an answer. He needs to finish the answer. Do
20 not interrupt the witness during his testimony.

21 BY MS. GOODMAN:

22 Q. You may proceed, Mr. Karpenko.

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Page 78

1 MR. RYAN: Are you finished
2 answering the question? I was going to -- I
3 want -- I was going to let the witness proceed
4 with his answer to this question, but then I
5 want to take a brief break to review this
6 document.

7 MS. GOODMAN: Please do not
8 interrupt the witness in the middle of his
9 testimony.

10 MR. RYAN: Counsel --

11 MS. GOODMAN: If you need to make
12 that statement, you wait for him to finish his
13 answer before you do that.

14 MR. RYAN: Counsel, I was, as a
15 courtesy, I was trying to wait for the witness
16 to finish answering the question, but at this
17 point, I would like to take a break and confer
18 with the witness.

19 MR. CHU: We need to go off.

20 MS. GOODMAN: Excuse me. You don't
21 get to unilaterally determine that we are going
22 off the record.

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Page 91

1 the record, I vehemently disagree with your
2 assertions of attorney work product and
3 attorney-client privilege with respect to this
4 line of communications.

5 And we will reserve all of our
6 rights to move to compel, and we will be
7 following up with you on these improper
8 objections.

9 I'm going to move on to another
10 exhibit.

11 MR. RYAN: Can you hand back --
12 since we've clawed them back --

13 MS. GOODMAN: No. It has all of my
14 attorney work product over it as well, so I'll
15 destroy it.

16 MR. RYAN: Fair enough.

17 MS. GOODMAN: For the record, let me
18 just ask this one more time because I
19 misspoke -- misstated the date.

20 BY MS. GOODMAN:

21 Q. When you were referencing a meeting
22 with attorneys for the United States Postal

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Page 92

1 Service, Mr. Karpenko, to the best of your
2 recollection, did that meeting occur some time
3 between January 9th and January 11th of 2023?

4 MR. RYAN: Objection to form and
5 foundation.

6 MS. GOODMAN: May he answer that
7 question?

8 THE WITNESS: Could you repeat it
9 one more time. Thank you.

10 BY MS. GOODMAN:

11 Q. Sure. When you were referencing a
12 meeting with attorneys for the United States
13 Postal Service, Mr. Karpenko, to the best of
14 your recollection, did that meeting occur some
15 time between January 9th and January 11th of
16 2023?

17 MR. RYAN: I'll restate the
18 objection.

19 THE WITNESS: I don't know for sure.

20 BY MS. GOODMAN:

21 Q. So your best testimony is you don't
22 know whether the meeting that prompted you --

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Page 93

1 strike that.

2 Was there a meeting that prompted
3 you to reach out to Universal McCann for a list
4 of third-party sites with attorneys for the
5 United States Postal Service?

6 MR. RYAN: I am going to object to
7 that question and instruct the witness not to
8 answer as it would call for privileged
9 communications with counsel.

10 BY MS. GOODMAN:

11 Q. Are you following that instruction?

12 A. I am.

13 Q. Okay.

14 MS. GOODMAN: I am handing you
15 Exhibit 35, USPS-ADS-899149 through 899151.

16 (Deposition Exhibit 35 was marked
17 for identification.)

18 BY MS. GOODMAN:

19 Q. And this is a series of text
20 messages between yourself and the phone number
21 301-437-7574 on January 9th, correct?

22 A. I do see it, yes.

HIGHLY CONFIDENTIAL

Page 94

1 Q. Okay. And the person that you're
2 texting with, is that Lisa Catucci at Universal
3 McCann?

4 A. It is.

5 Q. Yes. And to the best of your
6 knowledge, did this series of text messaging
7 take place on January 9th in the year 2023?

8 A. Yes.

9 Q. Okay. And why are you sending text
10 messages to Ms. Catucci asking: "Do we do much
11 advertising on third-party web sites, not
12 Twitter/FB?"

13 A. I am looking for information on how
14 UM helps the postal service purchase media.

15 Q. And why were you looking for that
16 information on January 9th of 2023?

17 A. So I could understand better what
18 the postal service does.

19 Q. Why did you want to understand
20 better what the postal service does at this
21 particular moment in time?

22 A. I had been looking for clarity from

HIGHLY CONFIDENTIAL

Page 95

1 the OIG when we had had a dialogue back and
2 forth, and I also referred to -- third party to
3 our media agency to see if they also understood
4 what third-party web sites might mean.

5 Q. Okay. So you see on the first page
6 your texts are on the right-hand side, correct?

7 A. Yes.

8 Q. And Ms. -- Ms. Catucci's texts are
9 on the left-hand side; is that right?

10 A. Yes.

11 Q. Okay. And you see Ms. Catucci
12 writes in response to your question: "Do we do
13 much advertising on third-party web sites, not
14 Twitter/FB?" she writes: "Like through our
15 programmatic buys?"

16 Do you see that?

17 A. Yes.

18 Q. And then she says: "We have a white
19 list of sites we run on through programmatic."

20 Do you see that?

21 A. I do.

22 Q. Okay. And then you write: "Maybe.

HIGHLY CONFIDENTIAL

Page 96

1 Give me an example of what you think is a
2 third-party site."

3 Do you see that?

4 A. I do.

5 Q. Why did you ask her to give you an
6 example of what she thinks is a third-party
7 site?

8 A. I was looking for clarity of her
9 perspective of what a third-party site is in
10 the eyes of a media agency.

11 Q. And from your point of view, why was
12 Ms. Catucci's perspective of what a third-party
13 site is important to obtain?

14 MR. RYAN: Objection to form and
15 foundation.

16 THE WITNESS: I didn't -- I didn't
17 necessarily understand what third-party site
18 would mean to everyone and was looking from the
19 perspective of what UM might consider the term
20 third-party site.

21 BY MS. GOODMAN:

22 Q. And Ms. Catucci responds: "Funny."

HIGHLY CONFIDENTIAL

Page 97

1 I don't really know what that term refers to.

2 I would assume in this context just one we
3 don't buy direct."

4 Do you see that?

5 A. Yes.

6 Q. And so was it significant to you
7 that Ms. Catucci, who works for the media
8 agency of record for the United States Postal
9 Service, did not know what that term referred
10 to?

11 MR. RYAN: Objection to form.

12 Vague.

13 THE WITNESS: I had asked in a
14 general way without specific context. It
15 appears that she was unsure herself.

16 BY MS. GOODMAN:

17 Q. Would you have expected Ms. Catucci
18 to understand the term third-party site if it
19 was a commonly used term in the advertising
20 industry?

21 MR. RYAN: Objection to form.

22 THE WITNESS: It goes back to

HIGHLY CONFIDENTIAL

Page 98

1 context. I'm not sure I had the fully --
2 full-known spectrum of what was being asked for
3 and was looking for more of a educational
4 perspective from someone in the media world of
5 what they felt third party might mean.

6 BY MS. GOODMAN:

7 Q. And so when somebody in the media
8 world responds as Ms. Catucci did here -- I
9 don't really know what that term refers to --
10 did you draw any conclusion that it is not a
11 term commonly used in the advertising industry?

12 MR. RYAN: Objection to form and
13 foundation.

14 THE WITNESS: I couldn't answer if
15 she -- I couldn't judge that on her -- her
16 answer.

17 BY MS. GOODMAN:

18 Q. So her answer did not -- so did the
19 fact that Ms. Catucci did know not what that
20 term refers to inform in any way your view as
21 to whether that term has any common usage in
22 the advertising industry?

HIGHLY CONFIDENTIAL

Page 99

1 A. I'm not sure I was clear on what
2 third party would be as a term in this
3 particular case or instance because I wasn't
4 quite sure what was potentially being asked
5 for.

6 Q. And so when Ms. Catucci did not
7 really know what that term refers to, was that
8 significant to you?

9 MR. RYAN: Objection to form.

10 THE WITNESS: Could you clarify.

11 BY MS. GOODMAN:

12 Q. Did it matter to you, in terms of
13 attempting to obtain clarity with respect to
14 what the OIG was asking for, that Ms. Catucci,
15 a person who works for the postal service's
16 media agency of record, did not know what that
17 term refers to?

18 MR. RYAN: Objection to form and
19 foundation.

20 THE WITNESS: It was a question I
21 asked to someone from the media agency. There
22 seemed to be some ambiguity to what third party

HIGHLY CONFIDENTIAL

Page 100

1 meant. I also had that ambiguity of what that
2 might mean. It validated to me that there was
3 continued ambiguity to the context of what was
4 being asked for.

5 BY MS. GOODMAN:

6 Q. And if we turn to the second page --
7 I'm sorry.

8 Ms. Catucci also writes: "So
9 Matterkind has the inventory from the site, and
10 we buy through them."

11 Do you see that?

12 A. I do.

13 Q. Okay. What is Matterkind?

14 A. Matterkind is a company that helps
15 place media for organizations, people.

16 Q. And does the postal service have a
17 contract directly with Matterkind?

18 A. Not that I'm aware of.

19 Q. Does the postal service, to your
20 knowledge, have -- strike that.

21 Does Universal McCann, to your
22 knowledge, have a contract with Matterkind?

HIGHLY CONFIDENTIAL

Page 120

1 cover e-mail as well?

2 MR. RYAN: Yes, but it will be
3 heavily redacted. I mean, the majority of the
4 document.

5 MS. GOODMAN: Okay. And can you
6 explain the basis for your attorney work
7 product privilege assertion over Exhibits 34
8 and 36?

9 MR. RYAN: Again, it is a
10 communication that resulted -- again, the --
11 it's a communication that results from a
12 request from DOJ as part of -- and so,
13 therefore, it is DOJ work product.

14 MS. GOODMAN: So are you claiming
15 any protection under the work product doctrine
16 around communications between nonattorneys and
17 media agencies for the federal agency
18 advertisers?

19 MR. RYAN: I'm going to stop you
20 right there. How many questions -- how many
21 times do I have to assert the same privilege.
22 We've clawed it back. I stated the reasons

HIGHLY CONFIDENTIAL

Page 121

1 why.

2 THE VIDEOGRAPHER: Can we go off the
3 record for a second so I can fix Mr. Ryan's
4 microphone.

5 MR. RYAN: Sorry. If you want to
6 use your time on this, that's fine, but I think
7 we have stated our reasons for our -- for why
8 we are clawing these documents back.

9 MS. GOODMAN: Okay. I just wanted
10 to give you the opportunity to make your record
11 because we will put it before the Court when we
12 move to compel, and it is your job -- it is the
13 United States's burden of proof and persuasion
14 to invoke this privilege, so I just want to
15 provide you the full opportunity to do that on
16 the record.

17 MR. RYAN: Appreciate it.

18 MS. GOODMAN: Do you have anything
19 more to say?

20 MR. RYAN: I don't have anything
21 more to say, no.

22 MS. GOODMAN: Thank you, Mr. Ryan.

HIGHLY CONFIDENTIAL

Page 122

1 We can go off the record.

2 THE VIDEOGRAPHER: Off the record.

3 The time is 12:42.

4 (A short recess was taken.)

5 THE VIDEOGRAPHER: Going back on the
6 record. The time is 13:39.

7 (The witness was excused from the
8 conference room.)

9 MR. RYAN: All right. Counsel,
10 thank you for giving me a minute just to
11 explain the basis of our privilege claims on 34
12 and -- what was Exhibits 34 and 36 and the
13 e-mails that are contained in them.

14 So 34A, what we've got now are
15 redacted copies of these e-mails, and I just
16 want to clarify the basis of the privilege.

17 So there were two separate requests
18 that the witness had. There's a request from
19 OIG, which we are not claiming privilege over,
20 but there is also a request from DOJ, and that
21 -- for that we are claiming privilege because
22 the -- when he came out and when he did work on

HIGHLY CONFIDENTIAL

Page 123

1 -- culled up and gathered information, that
2 would be work product. So we're claiming
3 privilege on DOJ portion. So that's why there
4 is this sort of distinction why we had to then
5 redact these pages.

6 So -- so 36, what is now marked as
7 36B, we didn't claim the attachment as
8 privilege because it's part of the OIG request.
9 But we just want to clarify that that was the
10 distinction.

11 So that's all I wanted to state on
12 the record. Thank you.

13 MS. GOODMAN: And --

14 MR. RYAN: I am not going to argue
15 or debate the exhibit, you know, the basis of
16 our privilege. That is the basis of our
17 privilege, and I just want to clarify that for
18 the record.

19 MS. GOODMAN: I just would like to
20 ask one clarifying question --

21 MR. RYAN: So I'm not going -- I'm
22 not going -- that will have to come out of your

HIGHLY CONFIDENTIAL

Page 124

1 time then.

2 MS. GOODMAN: My clarifying question
3 is to make your record better for you --

4 MR. RYAN: I appreciate that, but
5 I'm not -- I'm not going to engage with you
6 on -- on -- on this.

7 MS. GOODMAN: We can't talk over one
8 another because our court reporter needs to --

9 MR. RYAN: Yeah. I'm not the
10 deponent, but thank you, Martha.

11 MS. GOODMAN: You're welcome, Mr.
12 Ryan.

13 My question is: Is it remaining the
14 attorney work product privilege, or are there
15 any other --

16 MR. RYAN: I'm not going to -- I'm
17 not going to engage further with you on this.
18 Why don't we bring the witness back in and you
19 can resume your examination.

20 MS. GOODMAN: All right. And so you
21 will not let me state for the record my
22 question to you which is: Is your privilege

HIGHLY CONFIDENTIAL

Page 125

1 assertion limited to the Attorney Work Product
2 Doctrine?

3 MR. RYAN: I'm not going -- yes, but
4 that's -- I'm not going to go any further on
5 this with you. Okay.

6 MS. GOODMAN: That's all I wanted
7 you to make clear. Thank you, Mr. Ryan.

8 We can go off the record.

9 THE VIDEOGRAPHER: Going off the
10 record. The time is 13:42.

11 (A short recess was taken.)

12 THE VIDEOGRAPHER: Going back on the
13 record. The time is 13:43.

14 (The witness returned to the
15 conference room.)

16 (Deposition Exhibit 34A was marked
17 for identification.)

18 MS. GOODMAN: Mr. Karpenko, I am
19 handing you what is marked as Exhibit 34A,
20 USPS-ADS-43815 through 43816, which has been
21 redacted as a result of the United States
22 clawing back this document.

HIGHLY CONFIDENTIAL

Page 126

1 BY MS. GOODMAN:

2 Q. And I would like to ask you --

3 well --

4 A. Oh, I'm sorry.

5 MS. GOODMAN: I -- I handed the

6 marked copy to the witness.

7 BY MS. GOODMAN:

8 Q. Mr. Knopf writes to you: "To be
9 sure you have the information you need, are you
10 free to share the story behind this ask?"

11 Do you see that in the middle of the
12 page?

13 A. Yes.

14 Q. Okay. And you say: "Not sure,"
15 correct?

16 A. That is stated underneath my name in
17 this e-mail copy.

18 Q. And you wrote that?

19 A. I believe so.

20 Q. Okay. Why were you not sure whether
21 you could share the story behind the ask, which
22 is redacted on Page 16 in the initial e-mail

HIGHLY CONFIDENTIAL

Page 137

1 January of 2023 regarding ad spend?

2 A. That may be difficult for me to
3 answer because the UM team is about media and
4 ad spend and it could encompass almost anything
5 tied to our advertising efforts.

6 Q. Is it a normal part of your daily
7 work -- is it a routine part in your work to
8 have a one-on-one conversation with Ms. Catucci
9 about ad spend?

10 A. It would not be an exception.

11 Q. Okay. And subsequent to January of
12 2023, have you requested information from
13 United -- Universal McCann based on a
14 conversation with your counsel?

15 A. I'm not sure -- I'm not sure about
16 the question. Could you help me.

17 Q. Yeah. After the complaint in this
18 case was filed in January of 2023, have you
19 made requests to Universal McCann for
20 information in order to participate in this
21 lawsuit?

22 MR. RYAN: Counsel, I'm going to

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Page 138

1 object. That's calling for privileged -- it's
2 calling for privileged communication. I would
3 --

4 MS. GOODMAN: It is precisely the
5 same kind of testimony you've already permitted
6 him to provide. I am not asking for an
7 instance --

8 MR. RYAN: Well, that was a mistake
9 on my part.

10 MS. GOODMAN: -- I am asking a
11 yes-or-no question, which is whether he has
12 asked -- and I'll restate my question.

13 BY MS. GOODMAN:

14 Q. Mr. Karpenko, after January of 2023,
15 have you requested information from Universal
16 McCann as a result of a conversation with your
17 counsel?

18 A. I would say I have requested and
19 received various information from Universal
20 McCann both tied to privilege and not tied to
21 privilege.

22 MS. GOODMAN: We're going to move to

HIGHLY CONFIDENTIAL

Page 139

1 compel on those communications too.

2 BY MS. GOODMAN:

3 Q. Prior to January of 2023 in the
4 course of your work at the United States Postal
5 Service, did you ever develop any concerns that
6 Google was engaging in anticompetitive conduct?

7 A. I was unaware of any anticompetitive
8 conduct from Google.

9 Q. And in the course of your work as a
10 -- the executive director for brand marketing
11 at the postal service, did you ever develop any
12 concerns that you paid super-competitive prices
13 for Google products?

14 A. Can you clarify the -- the question.

15 Q. Yeah. In the course of your work as
16 executive director for brand marketing and
17 participating as an advertiser in the
18 advertising space, did you ever develop any
19 concerns that the postal service was paying too
20 much money for products or services from
21 Google?

22 MR. RYAN: Object to the form.

HIGHLY CONFIDENTIAL

Page 140

1 THE WITNESS: In my role I have a
2 responsibility for hundreds of millions of
3 dollars of budget, so I am always keeping top
4 of mind that we're spending our investments or
5 our moneys appropriately and getting the best
6 value for that.

7 So from a macro perspective, we're
8 always looking at trying to get the best value.

9 BY MS. GOODMAN:

10 Q. I appreciate that answer. And my
11 question is a bit more specific.

12 Understanding that context that
13 you're always trying to get the best value for
14 USPS ad spend, my question is: Did you ever
15 develop any concerns in the course of your work
16 as executive director for brand marketing that
17 the postal service was paying too much money
18 for products or services offered by Google?

19 A. So --

20 MR. RYAN: Object to form.

21 THE WITNESS: So whether it's Google
22 or another entity, we -- we have a fixed budget

HIGHLY CONFIDENTIAL

Page 311

1 figure out how much money has been paid to
2 Google under the UM USPS contract?

3 MR. RYAN: Objection to foundation
4 and form.

5 THE WITNESS: We at least have
6 visibility on investment that we have asked UM
7 to pay or to use for media, the big one is
8 Google Search. If there are others, it would
9 be a bit more in the weeds and I don't have
10 that visibility.

11 BY MS. GOODMAN:

12 Q. And does anybody, to your knowledge,
13 in the postal service have that visibility?

14 A. I don't believe so.

15 Q. Okay. Earlier, we were talking
16 about how the postal service helps connect
17 brands with customers, correct?

18 MR. RYAN: Objection to form.

19 THE WITNESS: Yes.

20 BY MS. GOODMAN:

21 Q. And does Google also help connect
22 brands with their customers?

HIGHLY CONFIDENTIAL

Page 312

1 MR. RYAN: Objection to foundation
2 and form.

3 THE WITNESS: Google is an
4 organization that offers up a number of
5 products and services that help customers --
6 and reach customers in a variety of ways.

7 BY MS. GOODMAN:

8 Q. The U.S. Postal Service is also an
9 organization that offers up a number of
10 products and services that help businesses
11 reach customers in a variety of ways; is that
12 accurate?

13 MR. RYAN: Objection to form.

14 THE WITNESS: There is value to
15 both.

16 BY MS. GOODMAN:

17 Q. But it is true that the postal
18 service is also an organization that offers up
19 a number of products and services that help
20 businesses reach customers in a variety of
21 ways?

22 MR. RYAN: Objection to form.

HIGHLY CONFIDENTIAL

Page 313

1 THE WITNESS: Yes, with probably
2 some -- some caveats in that.

3 BY MS. GOODMAN:

4 Q. Okay. And so with respect to
5 helping businesses reach their customers, does
6 the postal service compete with Google?

7 MR. RYAN: Objection to form and
8 foundation.

9 THE WITNESS: I think they offer
10 different products and services.

11 BY MS. GOODMAN:

12 Q. So is your answer no, that the
13 postal service does not compete with Google
14 with respect to helping businesses reach their
15 customers?

16 MR. RYAN: Objection to form and
17 foundation.

18 THE WITNESS: Probably depends on
19 what the customers are wanting or looking for.
20 They have similar approaches. The postal
21 service has the ability to offer products and
22 services, but doesn't limit who can enter in

HIGHLY CONFIDENTIAL

Page 314

1 utilizing those products and services, so you
2 could do it as an individual or you could do it
3 as a -- you could have an entity or business do
4 it for you. Google has products and services
5 that you could do something as an individual
6 potentially, or you are required to use
7 particular -- potential products and tools to
8 be able to accomplish what you need to for
9 them.

10 BY MS. GOODMAN:

11 Q. So is it at least fair to say that
12 the postal service provides a way for customers
13 -- businesses to reach their customers that is
14 complementary to services that Google offers
15 businesses in order to reach their customers?

16 MR. RYAN: Objection to form and
17 foundation.

18 THE WITNESS: I think both entities
19 have value to them and Google has provided
20 value to customers.

21 BY MS. GOODMAN:

22 Q. And has Google provided value to the

HIGHLY CONFIDENTIAL

Page 315

1 United States Postal Service from your point of
2 view?

3 A. We have used Google because they do
4 provide a value for the postal service for
5 certain efforts that we are trying to make.

6 Q. Okay.

7 MS. GOODMAN: We can take a break.

8 THE VIDEOGRAPHER: Going off the
9 record. The time is 18:50.

10 (A short recess was taken.)

11 THE VIDEOGRAPHER: Going back on the
12 record. The time is 19:01.

13 MS. GOODMAN: For the record, I am
14 ripping off the cover e-mail to Exhibit 36,
15 handing it to opposing counsel since he clawed
16 it back and marking the attachment as 36B. I
17 will just hand that to the witness but I don't
18 have any questions about it.

19 (Deposition Exhibit 36B was marked
20 for identification.)

21 BY MS. GOODMAN:

22 Q. Mr. Karpenko, have you had any

HIGHLY CONFIDENTIAL

Page 316

1 conversations with Brian Pasco about this
2 lawsuit?

3 A. Brian worked for me, and yes, I did
4 have conversations about the information.

5 Q. Subsequent to Brian Pasco leaving
6 the postal service, have you had any
7 conversations with him about this lawsuit?

8 A. I have not spoken to Brian since he
9 left.

10 Q. And so what conversations have you
11 had with -- did you have with Brian while he
12 was still at the postal service with respect to
13 this lawsuit?

14 A. To provide any information that
15 might be needed.

16 Q. Did he provide you any information?

17 A. He gathered up -- in general, he
18 gathered up all of his information because he
19 was leaving and he put it on a share drive.

20 Q. And was that for purposes of this
21 lawsuit or because it's a records management?

22 A. Both.

HIGHLY CONFIDENTIAL

Page 317

1 Q. And any other -- did he provide you
2 -- other than putting all of his information on
3 a share drive, did he provide you with any
4 other information in connection with this
5 lawsuit?

6 MR. RYAN: Just to the extent that
7 it doesn't communicate -- this was not -- did
8 not involve communications with counsel.

9 THE WITNESS: Nothing more than I'm
10 aware of.

11 BY MS. GOODMAN:

12 Q. Than putting the information on a
13 share drive before he left; is that accurate?

14 A. I don't recall him specifically
15 giving me any additional information, other
16 than making sure that he had his information
17 put onto a drive.

18 Q. Got it.

19 MS. GOODMAN: I have no further
20 questions for you at this time, Mr. Karpenko.
21 I will reserve the remainder of my time for the
22 questions that I was not permitted to ask the

HIGHLY CONFIDENTIAL

Page 318

1 witness based on what we view as improper
2 assertions of privilege.

3 So I'll hold the deposition open for
4 the record and I will pass the witness.

5 MR. RYAN: Any questions? I would
6 like to just note at this point, we would like
7 -- it might be automatic, but just for the
8 record, I just want to note that we want to
9 designate the entire transcript -- treat it --
10 have it treated as highly confidential for the
11 time allotted in the protective order, to allow
12 portions of the transcript to be -- the proper
13 portions to be designated and any exhibits that
14 are highly confidential.

15 MS. GOODMAN: Okay.

16 MR. RYAN: No questions for the
17 witness.

18 MS. GOODMAN: Thank you,
19 Mr. Karpenko.

20 THE WITNESS: Thank you.

21 THE VIDEOGRAPHER: This marks the
22 end of the deposition of Mr. Karpenko. Going

HIGHLY CONFIDENTIAL

Page 319

1 off the record at 19:05.

2 (Whereupon, the proceeding was
3 concluded at 7:05 p.m.)

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Page 320

1 CERTIFICATE OF NOTARY PUBLIC

2 I, Bonnie L. Russo, the officer before
3 whom the foregoing deposition was taken, do
4 hereby certify that the witness whose testimony
5 appears in the foregoing deposition was duly
6 sworn by me; that the testimony of said witness
7 was taken by me in shorthand and thereafter
8 reduced to computerized transcription under my
9 direction; that said deposition is a true
10 record of the testimony given by said witness;
11 that I am neither counsel for, related to, nor
12 employed by any of the parties to the action in
13 which this deposition was taken; and further,
14 that I am not a relative or employee of any
15 attorney or counsel employed by the parties
16 hereto, nor financially or otherwise interested
17 in the outcome of the action.

18
19 
20

21 Notary Public in and for
22 the District of Columbia

My Commission expires: August 14, 2025

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Page 321

1 Sean Carman

2 sean.carman@usdoj.gov

3 August 11, 2023

4 RE: United States, Et Al v. Google, LLC

5 8/10/2023, Christopher Karpenko (#6031969)

6 The above-referenced transcript is available for
7 review.

8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 erratas-cs@veritext.com.

16

17 Return completed errata within 30 days from
18 receipt of testimony.

19 If the witness fails to do so within the time
20 allotted, the transcript may be used as if signed.

21

Yours,

22

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Page 322

1 United States, Et Al v. Google, LLC

2 Christopher Karpenko (#6031969)

3 E R R A T A S H E E T

4 PAGE _____ LINE _____ CHANGE _____

5 _____

6 REASON _____

7 PAGE _____ LINE _____ CHANGE _____

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9 REASON _____

10 PAGE _____ LINE _____ CHANGE _____

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12 REASON _____

13 PAGE _____ LINE _____ CHANGE _____

14 _____

15 REASON _____

16 PAGE _____ LINE _____ CHANGE _____

17 _____

18 REASON _____

19 _____

20 _____

21 _____

22 Christopher Karpenko

Date

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Page 323

1 United States, Et Al v. Google, LLC

2 Christopher Karpenko (#6031969)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Christopher Karpenko, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10

11

12 Christopher Karpenko

Date

13

*If notary is required

14

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15

_____ DAY OF _____, 20____.

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19

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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